IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977.

No. 77-287

IN THE MATTER OF THE

ESTATE OF GEORGE WAYLAND

EVANS, Deceased

OTTO W. REEL, Executor, Appellant,

v.

IOWA DEPARTMENT OF REVENUE, Appellee.

ON APPEAL FROM THE SUPREME

COURT OF IOWA.

JURISDICTIONAL STATEMENT

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August , 1977

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JURISDICTIONAL STATEMENT

Appellant appeals from the judgement of the Supreme Court of Iowa upholding §450.51, 1973 Code of Iowa, as constitutional, which judgment was entered on

May 25, 1977, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the Supreme Court of Iowa is reported in 255 N.W.2d 99 (Iowa 1977). A copy of the opinion of the Iowa Supreme Court is attached hereto as Appendix A.

JURISDICTION

On April 1, 1975, Otto W. Reel brought this suit to determine the amount of Iowa inheritance tax owing, based on whether §450.51, 1973 Code of Iowa, creates an unconstitutional irrebuttable presumption that Paula Jo Faulconer an income beneficiary of the estate, will live a stated number of years, which presumption is in violation of the Fourteenth

Amendment. The Iowa District Court upheld the statute on May 22, 1975. On appeal, the Iowa Supreme Court also upheld the Iowa Statute against constitutional attack on May 25, 1977. The notice of appeal, attached as Appendix "B" was filed with the Supreme Court of Iowa on June 7, 1977. The jurisdiction of the Supreme Court to review this decision by appeal is conferred by Title 28 U.S.C. §1257 (2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: Cleveland Board of Education v. La Fleur, 414 U.S. 632 (1974); Vlandis v. Kline, 412 U.S. 441 (1973); U.S. Dept. of Agriculture v. Murry, 413 U.S. 508 (1973); Stanley v. Illinois, 405 U.S. 645 (1972); Bell v. Burson, 402 U.S. 535 (1971); Heiner v. Donnan, 285 U.S. 312 (1932); Schlesinger v. Wisconsin, 270 U.S. 230 (1926).

QUESTION PRESENTED

Where the undisputed medical evidence shows that Paula Jo Faulconer, the life beneficiary of a trust, cannot expect to live past age 40 based on reasonable medical certainty because she is a life long cerebral palsy victim and because her respiratory system has been weakened by different attacks of pneumonia, may the legislature of the State of Iowa irrebuttably presume that Paula Jo's life expectancy is correctly set forth in standard mortality tables without consideration of her actual life expectancy?

STATUTE INVOLVED

Section 450.51 found in Volume II, page 2042, of the 1973 Code of Iowa provides as follows:

> The value of any annuity, deferred estate, or interest, or any estate for life or term of years, subject to inheritance tax shall be determined for the purpose of computing said tax by the use of current, commonly used tables of mortality and actuarial principles pursuant to regulations prescribed by the director of revenue. The taxable value of annuities, life or term, deferred, or future estates, shall be computed at the rate of four percent per annum of the appraised value of the property in which such estate or interest exists or is founded.

STATEMENT

There is no dispute about the facts in this case. Paula Jo Faulconer is the life beneficiary of the income of a trust with the remainder going to a hospital. Under Iowa law, only Paula Jo's interest is subject to Iowa inheritance tax as the hospital's interest is exempt from tax because it is a charitable organization, §450.4 (2), 1973 Code of Iowa.

The amount of Iowa inheritance tax due on Paula Jo's life income interest is directly proportional to her life expectancy.

The parties stipulated that the medical evidence based on reasonable medical certainty would show that, Paula Jo "does not have a life expectancy of an average normal person***." In fact, the record shows that Paula Jo cannot expect to live beyond age 40. Paula Jo has had cerebral palsy since her birth and is totally paralyzed in her lower limbs. She is helpless without the aid of either a wheelchair or crutches. Paula Jo has had three attacks of pneumonia which have weakened her respiratory system. As mentioned, Paula Jo cannot expect to live past age forty.

Despite this medical evidence, §450.51, 1973 Code of Iowa conclusively presumes that Paula Jo's life expectancy is correctly set forth in standard mortality tables. In other words, the Iowa Code conclusively presumes that Paula Jo has the life expectancy of a normal person. Both on the face of §450.51.

and under its construction by the Iowa Supreme Court, no extrinsic evidence is allowed to rebut the life expectancies set forth in the standard mortality tables.

Without question, the issue of the constitutionality of §450.51 was timely raised in proper fashion. In paragraphs six and nine of the first pleading (the petition) filed in the trial court in this suit (found on page 4 of the Supreme Court of Iowa Appendix), Executor-appellant first challenged the constitutionality of §450.51. In paragraph six of that pleading, the Executor stated:

> In computing the Iowa inheritance tax owing, the inheritance tax division of the Iowa Department of Revenue has taken the position that the mortality tables of Iowa Code Chapter 450 create an "irrebuttable presumption" of correctness and that no consideration can be given of her actual medical condition as it affects Paula Jo Faulconer's actual life expectancy.

The trial court's ruling (found on pages 7 through 10, inclusive of the Appendix filed in the Supreme Court of Iowa) deals solely with the constitutional issue. Similarly, the opinion of Supreme Court of Iowa found in Appendix A of this Statement deals solely with the constitutional issue.

In order to confer jurisdiction under 28 U.S.C. 1257 (2), the validity of a state statute must be "drawn in question" on the basis of a federal constitutional ground and the decision below must be in favor of its validity. In its decision found in Appendix A, the Supreme Court of Iowa stated:

> We hold §450.51, The Code, and its implementing rule minimally comport with the Fourteenth Amendment due process under the Safi decision, supra.

Thus, this case is squarely within the jurisdictional grant of 28 U.S.C. §1257 (2).

THE QUESTION IS SUBSTANTIAL

Importantly, §450.51 contains an irrebuttable presumption. In its opinion, the Supreme Court of Iowa stated:

> The mandatory use of the mortality table irrebuttably presumes every 16-year-old life beneficiary or tenant shall live 54 years, and the affected taxpayer has no hearing opportunity to prove otherwise.

The foregoing becomes more clear when one analyzes the statute. There is an irrebuttable presumption when a "presumed fact" is inferred from a "basic fact" and accepted as true regardless of any evidence to the contrary. The "presumed fact" is relevant to the statutory purpose while the basic fact is not. Note, The Irrebuttable Presumption Doctrine in The Supreme Court, 87 Harv. L. Rev. 1534, (1974).

In Paula Jo's case, the "basic fact" is her age at the time the testamentary

trust was created; the "presumed fact" is her life expectancy. Section 450.51 presumes her life expectancy through use of mortality tables and does not allow any extrinsic evidence to rebut that presumed life expectancy.

The irrebuttable presumption contained in §450.51 is clearly unconstitutional because it is neither "necessarily nor universally true" and because the presumption conflicts with the statutory purpose of Chapter 450 of the Iowa Code. As shown so dramatically by Paula Jo's case, the presumption of §450.51 that mortality tables accurately reflect life expectancy is neither "necessarily (nor) universally true." Cleveland Board of Education v. La Fleur, 414 U.S. 632, 646 (1974); see Vlandis v. Kline, 412 U.S. 441, 448 (1973).

The statutory intent of Chapter 450 of the Iowa Code is to impose a tax on the actual value of property transferred.

When life estates in personal property are transferred, §450.47, 1973 Code of Iowa, requires that the Clerk have the "value of the several estates or interests" determined as provided by §450.51. In Paula Jo's case, it is clear that presumptive life expectancy found in the mortality table conflicts with the statutory scheme. In Bell v. Burson, 402 U.S. 535, 541 (1971), the Court invalidated a conclusive presumption because it conflicted with "an important factor" in the statutory scheme. The Bell case was cited with approval in Vlandis v. Kline, 412 U.S. 441, 446-47 (1973).

Importantly, the state interest in a correct valuation of life estates for inheritance tax purposes could be promoted by a well designed hearing procedure. Justice Marshall has stated:

> In short, where the private interests affected are very

> important and the governmental interest can be promoted without much difficulty by a well designed hearing procedure, the Due Process Clause requires the Government to act on an individualized basis, with general propositions serving only as rebuttable presumptions or other burden shifting devices. U.S. Dept. of Agriculture v. Murry, 413 U.S. 508, 518 (1973) (Marshall, J. Concurring).

In Paula Jo's case, a simple hearing to determine her actual life expectancy would have protected Iowa's interest in valuation of the life interest while providing Paula Jo with the "fairness" required by the Due Process Clause of the Fourteenth Amendment. Id. at 519.

It is clear that the State interest in administrative convenience and efficiency cannot save an irrebuttable presumption from the requirements of the Due Process Clause. Stanley v. Illinois, 405 U.S. 645, 656 (1972) ([The] Constitution recognizes higher values than speed and efficiency); Vlandis v. Kline, 412 U.S.

441, 451 (1973). Under the Constitution, Paula Jo is entitled to an individualized determination of her life expectancy.

The Supreme Court of Iowa upheld §450.51 against constitutional challenge because it read Weinberger v. Salfi, 422 U.S. 749 (1975) as limiting the irrebuttable presumption doctrine to "fundamental rights" and "important liberties." However, Safi and its progeny Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976) do not overrule Vlandis v. Kline, 412 U.S. 441 (1973). Vlandis was concerned with a state statute with an irrebuttable presumption concerning residency for tuition purposes. Residency has never been classified as a "fundamental right" or an "important liberty." In effect, the Supreme Court of Iowa has attempted to overrule Vlandis. This usurpation of the Constitution presents a substantial question requiring plenary

consideration by this Court, with briefs on the merits and oral argument.

Even if the irrebuttable presumption doctrine does not apply to statutes regulating "purely economic matters", Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976), the tax on Paula Jo's life interest is not a purely economic matter. Since §450.51 taxes her interest on the basis of an incorrect mortality table, §450.51 in fact imposes a tax on Paula Jo based upon not only her life interest but also a portion of the charitable remainder interest. A tax based upon the wealth of another is particularly repugnant to Due Process:

> Such a law is far more capricious than merely retroactive taxes. Those do indeed impose unexpected burdens, but at least they distribute them in accordance with the taxpayer's wealth. But this section distributes them in accordance with another's wealth, that is a far more grievous injustice. Heiner v. Donnan, 285 U.S. 312, 328 (1932).

In Heiner, the Court stated that such a tax was:

> Arbitrary and a denial of due process of law. Such an exaction is not exaction but spoliation. Id. at 327; see also Schlesinger v. Wisconsin, 270 U.S. 230, 239-40 (1926).

Importantly, the Heiner case was cited with approval in Viandis v. Kline, 412 U.S. 441, 446 (1973). Since the tax operates by imputing a portion of the charitable remainder to Paula Jo, the tax operates in an area which has traditionally been the object of concern and scrutiny under the Due Process Clause. Consequently, the Iowa Statute does not operate in a "purely economic area" where the Court defers to the legislature. Even under the Iowa Supreme Court's interpretation of the Safi case, the irrebuttable presumption doctrine applies to §450.51, 1973 Code of Iowa.

The question of the constitutionality of §450.51 is so substantial as to require plenary consideration for several reasons. First, the irrebuttable presumption is neither "necessarily nor universally true" with respect to Paula Jo. In fact, the irrebuttable presumption is extremely inaccurate with respect to the statutory purpose. Also, fairness requires the State of Iowa to act on an individualized basis in Paula Jo's case by means of a well designed hearing procedure.

In effect, the Iowa Supreme Court has attempted to overrule the Vlandis case. For this reason alone, the Court should note probable jurisdiction. Furthermore, §450.51 contains an unconstitutional irrebuttable presumption even under the Iowa Supreme Court's interpretation of Safi. For the foregoing reasons, this

case requires plenary consideration with briefs on the merits and oral argument.

Respectfully submitted,

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PROOF OF SERVICE

STATE OF IOWA, MARSHALL COUNTY, ss:

I, Allen E. Brennecke, being first duly sworn, do on oath say that I served three printed copies of the foregoing Jurisdictional Statement on the 17 day of August, 1977, by depositing the same in a United States mailbox, with first-class postage prepaid, addressed to Richard C. Turner, Attorney General, George W. Murray, Special Assistant Attorney General, Harry M. Griger, Assistant Attorney General, and Kevin Maggio, Assistant Attorney General, Lucas State Office Building, Des Moines, Iowa 50319.

MOTE, WILSON & WELP

BY: Allen E. Brennecke
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Subscribed and sworn to before me at Marshalltown, Iowa, by Allen E. Brennecke, this 17 day of August, A.D., 1977.

John Heartney
Notary Public, State of Iowa

JOHN HEARTNEY
MY COMMISSION EXPIRES
September 30, 1977

Appendix A

IN THE SUPREME COURT OF IOWA

IN THE MATTER OF THE ESTATE OF GEORGE WAYLAND EVANS, Deceased.	*	Filed May 25, 1977
OTTO W. REEL, Executor, Appellant,	*	
vs.	*	93 / 2-58502
IOWA DEPARTMENT OF REVENUE, Appellee.	*	

Appeal from Jackson District Court - Max R. Werling, Judge.

Plaintiff appeals from trial court decree upholding constitutionality of Department of Revenue's exclusive use of mortality tables in computing value of life estates.--AFFIRMED.

Dennis E. Roberson, of Maquoketa, and Allen E. Brennecke, of Mote, Wilson & Welp, Marshalltown, for appellant.

Richard C. Turner, Attorney General, George W. Murray, Special Assistant Attorney General, Harry M. Griger, Assistant Attorney General, and Kevin Maggio, Assistant Attorney General, for appellee.

Heard by Moore, C.J., Rawlings, LeGrand, Rees and Reynoldson, JJ.

REYNOLDSON, J.

The fighting issue in this appeal involves the Iowa Department of Revenue's exclusive use of mortality tables in computing the value of a life beneficiary's interest in a testamentary trust. The beneficiary, whom the evidence disclosed would not live out a normal life, asserted due process guarantees of the state and federal constitutions were violated by the Iowa statute and Department rule prescribing the mortality tables as the sole basis for determining value of the interest and resulting inheritance tax. Trial court held there was no violation of constitutional due process. We agree.

The essential facts are not disputed. George W. Evans, a resident of Jackson County, died testate on April

17, 1973. One of the provisions in his will provided for certain property to be placed in trust with a corporate trustee. Decedent's cousin, Paula Jo Faulconer, was to receive the trust income for life. Upon termination of her life interest, a charitable institution was to receive the corpus. The value of Paula's life interest in the trust is subject to inheritance tax; the remainder is exempt.

Paula was 16 years of age when Evans died. In computing the value of her trust interest, the Department insisted on using the mortality tables which projected for her a 70-year life expectancy.

Protesting, Paula on April 1, 1975 filed in district court an "Application for Determination of Iowa Inheritance Tax Owing." This application alleged

the inflexible resort to mortality tables created an irrebuttable presumption in violation of the due process clauses of the Iowa and federal constitutions.

The parties stipulated that if Paula's family doctor were called to testify he would state his patient had suffered from cerebral palsy since birth. She is totally paralyzed in her lower limbs and partially handicapped in her upper limbs. Consequently, she is unable to move her body except through use of braces, a wheelchair, or crutches. Three separate pneumonia attacks have weakened Paula's respiratory system and increased her susceptibility to chest colds. These parties stipulated this doctor would testify it was his opinion, based on reasonable medical certainty, that Paula could not be expected to live beyond age 40. The Department did not controvert these facts, but merely objected the evidence would be incompetent,

irrelevant and immaterial for purposes of determining the Iowa inheritance tax owing.

The sole issue before us is whether trial court was right in holding the applicable statute and rule did not violate the due process clauses of the Iowa and United States Constitutions. See Amendment 14, section 1, United States Constitution; Article I, section 9, Iowa Constitution.

I. The heavy burden which must be carried by one seeking to invalidate a statute on constitutional grounds has been described in several recent decisions and will not be repeated here. John R. Grubb, Inc. v. Iowa Housing Finance Authority, _____ N.W.2d _____, _____ (Iowa, filed May 25, 1977); City of Waterloo v. Seldon, _____ N.W.2d _____, _____ (Iowa, filed March 16, 1977).

The crucial statute is § 450.51, The Code, which provides in relevant part:

> "The value of any * * * estate for life * * * subject to inheritance tax shall be determined for the purpose of computing said tax by the use of current, commonly used tables of mortality and actuarial principles pursuant to regulations prescribed by the director of revenue. * * *." (emphasis supplied)

The only applicable regulation prescribed by the director of revenue is found in Iowa Administrative Code, Revenue (730), Ch. 86, § 86.1 (450):

> "The Commissioners 1958 Standard Ordinary Mortality Table. Where death occurs on or after July 4, 1965, inheritance tax shall be computed by use of the Commissioners 1958 Standard Ordinary Mortality Table.
>
> "This rule is intended to implement chapter 450 of the Code." (emphasis supplied)

Both parties agree this statute and regulation impose the mortality table as the exclusive method of proving the value of a life estate and no extrinsic evidence is allowed to rebut the expectancies reflected by the tables.

The beneficiary argues this creates an irrebuttable presumption, a device a number of federal decisions have held to be constitutionally invalid under the due process clause. The Department asserts the statute merely creates a rule of substantive law, not an unconstitutional presumption.

II. No controlling Iowa decisions have been found in the research of the parties or this court. Our decision in State v. Hansen, 203 N.W.2d 216 (Iowa 1972), contains an extensive examination of the role of presumptions and inferences in criminal statutes. We there held a statutory presumption that a person with a stated amount of alcohol in his blood was under the influence of an intoxicating beverage could not constitutionally be interpreted as a conclusive presumption. See State v. Drake, 219 N.W.2d 492, 496 (Iowa 1974)

In Farnsworth v. Hazelett, 197 Iowa

1367, 199 N.W. 410 (1924), we had under scrutiny the general rule that knowledge of an attorney is chargeable to his client, a concept sometimes termed a "conclusive presumption." The court reasoned such "presumptions" are actually substantive rules of law.

Although Snook v. Herrmann, 161 N.W.2d 195 (Iowa 1968) concerned § 85.42(2), The Code, which provided a child under 16 "shall be conclusively presumed to be wholly dependent upon the deceased employee," the issues raised there were ones of statutory construction, not constitutionality.

Also, preliminary to our analysis, it should be noted there may be present in the type of problem we now face, the inevitable tension between the legislature's constitutional right to enact substantive law and the indestructible judicial function to investigate evidence in the factual

determinations required in applying law to controverted cases. "Hence, to make a rule of conclusive evidence, compulsory upon the Judiciary, is to attempt an infringement upon their exclusive province." IV Wigmore on Evidence § 1353, at 716 (3d ed. 1940).

III. The "irrebuttable presumption" doctrine had its roots in Schlesinger v. Wisconsin, 270 U.S. 230, 46 S.Ct. 260, 70 L.Ed. 557 (1926). There the court struck down a Wisconsin statute which conclusively presumed all transfers within six years of death were in contemplation thereof, stating,

> "Gifts inter vivos within six years of death, but in fact made without contemplation thereof, are first conclusively presumed to have been so made without regard to actualities, while like gifts at other times are not thus treated. There is no adequate basis for this distinction."
> --270 U.S. at 240, 46 S.Ct. at 261, 70 L.Ed. at 564.

While the opinion is posited on both due process and equal protection grounds, the

above language more closely relates to equal protection.

Schlesinger was followed by Heiner v. Donnan, 285 U.S. 312, 52 S.Ct. 358, 76 L.Ed. 772 (1932), which invalidated on constitutional presumed gifts made within two years of the donor's death were made in contemplation of death. The Heiner court observed "* * * that a statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the 14th Amendment." 285 U.S. at 329, 52 S.Ct. at 362, 76 L.Ed. at 781.

After Heiner the irrebuttable presumption doctrine was relegated to limbo for almost 40 years. Its revival is generally credited to Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971), a decision striking down a Georgia statute which permitted the state to revoke a driver's license without a fault hearing if the driver failed to post security. See Chase,

The Premature Demise of irrebuttable Presumptions, 47 U. Colo. L. Rev. 653, 665-666 (1976).

There followed a succession of decisions applying the doctrine, including Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972) (striking down Illinois statute as conclusively presuming all unmarried fathers to be unfit parents); Vlandis v. Kline, 412 U.S. 441, 93 S.Ct. 2230, 37 L.Ed. 2d 63 (1973) (invalidating a Connecticut statute which conclusively fixed a student's residency status at time of application for university admission); United States Department of Agriculture v. Murry, 413 U.S. 508, 93 S.Ct. 2832, 37 L.Ed.2d 767 (1973) (striking a section of the Food Stamp Act which presumed food stamp ineligibility for households containing a member over 18 who had been claimed as a dependent for the

previous year by a taxpayer living in another household); Cleveland Board of Education v. LaFleur, 414 U.S. 632, 94 S.Ct. 791, 39 L.Ed2d 52 (1974) (striking school regulations requiring pregnant teachers to take leave without pay beginning five months before expected birth of child).

But the irrebuttable presumption doctrine proved to be a risky tool. Any statute involving a legislative classification became vulnerable to an irrebuttable presumption attack and analysis. For example, the LaFleur regulations did not expressly invoke or mention a presumption, irrebuttable or otherwise, that women in the later stages of pregnancy were physically unable to work. Yet the court found the regulations to "contain an irrebuttable presumption of physical incompetency, and that presumption applies even when the medical evidence as to an individual woman's physical status might

be wholly to the contrary." 414 U.S. at 6 4, 94 S.Ct. at 798, 39 L.Ed.2d at 62.

The doctrine was difficult to limit in its scope and application. In order to nullify a statute, Vlandis, supra, merely required a presumption not universally true in fact, and reasonable alternative means or making the crucial determination. 412 U.S. at 452, 93 S.Ct. at 2236, 37 L.Ed.2d at 71. Other courts were impelled to uphold an irrebuttable presumption if it was found "reasonable," a rather subjective criterion at best. Shanahan v. United States, 447 F.2d 1082, 1084 (10th Cir. 1971); Gulf Oil Corp. v. Heath, 501 S.W.2d 787, 791 (Ark. 1973).

The apparent indiscriminate use of the doctrine came under a drumfire of criticism from academicans. See, e.g., Chase, The Premature Demise of Irrebuttable Presumptions:

47 U. Colo. L. Rev. 653 (1976); Note, Irrebuttable Presumptions: An Illusory Analysis, 27 Stanford L. Rev. 449 (1975); Note, The Irrebuttable Presumption Doctrine in the Supreme Court, 87 Harv. L. Rev. 1534 (1974). It revoked increasingly sharp dissents. See, e.g., Vlandis, supra, 412 U.S. at 459, 93 S.Ct. at 2240, 37 L.Ed.2d at 76 (Justice Rehnquist, dissenting).

Finally, in Weinberger v. Salfi, 422 U.S. 749, 95 S.Ct. 2457, 45 L.Ed.2d 522 (1975), the court severely limited the irrebuttable presumption doctrine. At stake in Salfi was a social security act provision which denied benefits to wives and stepchildren who held their respective relationships to a deceased wage earner for less than nine months prior to his death. See 42 U.S.C. §§ 416(c) (5) and (e) (2). A three-judge district court, on behalf of a widow who married the wage

earner only six months before his death and who was denied benefits without hearing, struck the requirement on the ground it was an irrebuttable presumption which violates due process.

In rejecting the district court's analysis the Supreme Court said,

> "We think that the District Court's extension of the holding of Stanley, Vlandis and LaFleur to the elegibility requirement in issue here would turn the doctrine of those cases into a virtual engine of destruction for countless legislative judgements which have heretofore been thought wholly consistent with the Fifth and Fourteenth Amendments to the Constitution." --422 U.S. at 772, 95 S.Ct. at 2470, 45 L.Ed2d at 543.

The rationale of the Salfi court's effort to distinguish Vlandis is obscure. The analysis it employed to validate the statute was essentially a minimum equal protection test. "(A) classification that meets the (equal protection) test articulated in Dandridge is perforce consistent

with the due process requirement of the Fifth Amendment." Salfi, supra, 422 U.S. at 770, 95 S.Ct. at 2469, 45 L.Ed.2d at 541-542. Reference to "Dandridge" was to Dandridge v. Williams, 397 U.S. 471, 485, 90 S.Ct. 1153, 1161, 25 L.Ed.2d 491, 501-502 (1970), where the court held that in the area of economics and social welfare a state does not violate the equal protection clause because the classifications made by its laws are imperfect. If the classification has some reasonable basis it does not offend the constitution simply because the classification is not made with mathematical nicety or because in practice it results in some inequality, so long as suspect classifications are avoided.

The Salfi decision appears to narrow the applicability of the irrebuttable presumption doctrine to situations involving

what the court has elsewhere designated as "fundamental rights," or at least circumstances endangering crucial interests which Salfi refers to as "important liberties." See Mourning v. Family Publications Service, 411 U.S. 356, 93 S.Ct. 1652, 36 L.Ed.2d 318 (1973).

It is true Salfi overrules no prior decisions. Apparently where there is a recurrence of almost identical factual situations, the United States Supreme Court will continue to apply the doctrine. See Turner v. Dep't of Employment Security, 423 U.S. 44, 96 S.Ct. 249, 46 L.Ed.2d 181 (1975).

IV. We thus turn to the statute before us, scrutinizing its features in light of Salfi's constraints on the irrebuttable presumption doctrine.

Of course the statute, implemented by the rule, lends itself to such an analysis.

The mandatory use of the mortality table irrebuttably presumes every 16-year old life beneficiary or tenant shall live 54 years, and the affected taxpayer has no hearing opportunity to prove otherwise. But if the classification meets equal protection standards, it will, under Salfi, meet the due process challenge raised by the irrebuttable presumption doctrine.

We note first the area in which the statute operates. The broad discretion granted a legislature to classify in the field of taxation has long been recognized. Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 359, 93 S.Ct. 1001, 1003, 35 L.Ed.2d 351, 355 (1973); Madden v. Kentucky, 309 U.S. 83, 87-88, 60 S.Ct. 406, 408, 84 L.Ed. 590, 593 (1940).

This beneficiary is removed even further from a protected area because there is involved here a tax on the right of succession.

"The tax is not a tax (though it is a lien) on the property itself, or upon the estate, but upon the succession or right to take by succession." Tavener v. Tax Commission, 231 Iowa 162, 166, 300 N.W. 653, 655 (1941).

> "Rights of succession to the property of a deceased, whether by will or by intestacy, are of statutory creation, and the dead hand rules succession only by sufferance. Nothing in the Federal Constitution forbids the legislature of a state to limit, condition, or even abolish the power of testamentary disposition over property within its jurisdiction." --Irving Trust Co. v. Day, 314 U.S. 556, 562, 62 S.Ct. 398, 401, 86 L.Ed. 452, 457 (1942).

Obviously, the legislation before us does not involve a fundamental right or "important liberty." Imposing the same inheritance tax on a 16-year-old who may live only 24 years and a 16-year-old who may live 54 years is probably no more basically unfair than imposing on a laborer who, through economic necessity "moonlights,"

a higher tax rate than is imposed on his neighbor who holds only one job. See Brushaber v. Union Pacific R.R. Co., 240 U.S. 1, 21-24, 36 S.Ct. 236, 243-244, 60 L.Ed. 493, 503-504 (1915) (progressive tax rate structure is not a violation of due process clause of 5th Amendment).

We now move to the other criteria by which much classification statutes are judged. No suspect classifications are involved. See Note, The Conslusive Presumption Doctrine: Equal Process or Due Protection? 72 Mich. L. Rev. 800, 810 (1974). The classification which imposes inheritance tax on the basis of the age of a life beneficiary or tenant is broadly based on reason and logic. That such an inflexible classification may sometimes result in inequality will not, under the above circumstances, invalidate it on equal protection grounds, Weinberger v. Salfi,

supra, 422 U.S. 749, 95 S.Ct. 2457, 45 L.Ed.2d 522; Dandridge v. Williams, supra, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491. Therefore it will pass the due process test laid down in Salfi.

We hold § 450.31, The Code, and its implementing rule minimally comport with Fourteenth Amendment due process under the Salfi decision, supra.

Of course, we may apply the due process clause of Article I, section 9, Iowa Constitution, in a different manner. See Davenport Water Co. v. Iowa State Commerce Com'n, 190 N.W.2d 583, 593 (Iowa 1971). However, where, as here, federal and state constitutional provisions contain a similar guarantee, they are usually deemed identical in copy, import and purpose. See Shearer v. Perry Community Sch. Dist., 236 N.W.2d 688, 691-692 (Iowa 1975).

We do not propose to follow the United States Supreme Court's course into the irrebuttable presumption morass from which it has only so recently and stickily retreated. We hold this statute and rule are not in violation of due process under the Iowa Constitution.

In so holding, we are not unaware of the harshness of the result, an inevitable end product of every inflexible classification statute. As legislative determination to make the § 450.31 presumption rebuttable would promote justice in hardship cases. While the present rule enhances efficiency, the policy considerations articulated in Stanley v. Illinois, supra, 405 U.S. at 656, 92 S.Ct. at 1215, 31 L.Ed.2d at 561-562, are worthy of consideration;

> "(T)he Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the

> fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones."

But those policy considerations in these circumstances are for the legislative and not the judicial department.

Accordingly, we affirm the ruling below.

AFFIRMED.

Appendix B

IN THE SUPREME COURT OF IOWA

IN THE MATTER OF THE ESTATE OF GEORGE WAYLAND EVANS, Deceased.	*	Filed May 25, 1977
OTTO W. REEL, Executor, Appellant,	*	
vs.	*	NO. 93 / 2-58502
IOWA DEPARTMENT OF REVENUE, Appellee.	*	

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Otto W. Reel, Executor, the appellant above named hereby appeals to the Supreme Court of the United States from the final judgement of the Supreme Court of the State of Iowa, affirming the Trial Court's judgement adverse to appellant, entered in this action entered on May 25, 1977.

This appeal is taken pursuant to 28 U.S.C. § 1257 (2).

/s/ Allen E. Brennecke
Counsel for Appellant

PROOF OF SERVICE

STATE OF IOWA, MARSHALL COUNTY, ss:

I, Allen E. Brennecke, being first duly sworn, do on oath say that I served the one typewritten copy of the foregoing Notice of Appeal on the 6th day of June, 1977, by depositing the same in a United States mailbox, with first-class postage prepaid, addressed to Richard C. Turner, Attorney General, George W. Murray, Special Assistant Attorney General, Harry M. Griger, Assistant Attorney General, and Kevin Maggio, Assistant Attorney General, Lucas State Office Building, Des Moines, Iowa 50319.

MOTE, WILSON & WELP

/s/ Allen E. Brennecke
302 Masonic Temple Building
Marshalltown, Iowa 50158

Subscribed and sworn to before me at Marshalltown, Iowa, by Allen E. Brennecke, this 6th day of June, A.D., 1977.

/s/ John Heartney
Notary Public, State of Iowa